

Exhibit 9

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 23-01101-mg

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6 In the Matter of:

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8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 RHODIUM ENTERPRISES, INC.,

13 Plaintiff,

14 v.

15 CELSIUS MINING LLC,

16 Defendants.

17 - - - - - x

18

19 United States Bankruptcy Court

20 One Bowling Green

21 New York, NY 10004

22

23 May 2, 2023

24 5:01 PM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: JONATHAN

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1 HEARING re Adversary proceeding: 23-01101-mg Rhodium
2 Enterprises, Inc. v. Celsius Mining LLC Case Management
3 Conference Using Zoom for Government. (Doc## 7, 10, 15, 16)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 STRIS MAHER LLP

4 Attorneys for Plaintiff, Rhodium Enterprises, Inc.

5 777 S Figueroa Street, Suite 3850

6 Los Angeles, CA 90017

7

8 BY: DANA BERKOWITZ

9 VICTOR O'CONNELL

10 JOHN STOKES

11

12 AKIN GUMP STRAUSS HAUER & FELD LLP

13 Attorneys for Defendant, Celsius Mining LLC

14 One Bryant Park

15 New York, NY 10036

16

17 BY: DEAN CHAPMAN

18 MICHELL HURLEY

19

20 AKIN GUMP STRAUSS HAUER & FELD LLP

21 Attorneys for Defendant, Celsius Mining LLC

22 2300 N. Field Street, Suite 1800

23 Dallas, TX 75201

24

25 BY: ELIZABETH SCOTT

1 WHITE & CASE LLP

2 Attorneys for Defendant, Celsius Mining LLC

3 1221 Avenue of the Americas

4 New York, NY 10020

5

6 BY: SAMUEL P. HERSHEY

7

8 ALSO PRESENT TELEPHONICALLY:

9 VENKATA PHANI AMARTHALURU

10 JESSE BAIR

11 KENNEDY BODNAREK

12 TIMOTHY BURNS

13 ANGELA CIPOLLA

14 TRUSHA GOFFE

15 UDAY GORREPATI

16 DIETRICH KNAUTH

17 FRANK A. OSWALD

18 CHRISTOPHER PERKINS

19 ADAM M. SMITH

20 CHELSIE WARNER

21 BRIANNA B. BILTTER

22 TAYLOR HARRISON

23 CATHY TA

24 VICTOR UBIERNA DE LAS HERAS

25 KAILA ZAHARIS

1 P R O C E E D I N G S

2 CLERK: Okay. Calling Case Number 23-01101-mg,
3 Rhodium Enterprises, Inc. v. Celsius Mining LLC. For the
4 parties that just joined, if you can unmute and give your
5 appearances. Thanks so much.

6 MR. STOKES: Thank you. This is John Stokes from
7 the law firm Stris & Maher on behalf of the Plaintiff in the
8 adversary proceeding, Rhodium Enterprises, Inc. I'll be
9 joined momentarily by a couple of my colleagues.

10 CLERK: Okay. Thank you very much.

11 MR. STOKES: Thank you.

12 CLERK: Ms. Zaharis, would you mind unmuting and
13 making your appearance?

14 MS. ZAHARIS: Hi. Can you hear me?

15 CLERK: Yes, I can hear you.

16 MS. ZAHARIS: Sorry. I'm actually not appearing
17 today. I'm just listening.

18 CLERK: Okay. Thank you so much.

19 MS. ZAHARIS: Thank you. Sorry about my voice.

20 CLERK: No apologies necessary. Hope you feel
21 better. You can pause the recording, Jonathan. Mr.
22 O'Connell, do you mind unmuting and giving your appearance?

23 MR. O'CONNELL: Of course. My name is Victor
24 O'Connell here for Plaintiff.

25 CLERK: Thank you very much. You can pause the

1 recording, Jonathan. Ms. Berkowitz, can you please unmute
2 and give your appearance?

3 MS. BERKOWITZ: Good afternoon. This is Dana
4 Berkowitz with Stris & Maher.

5 CLERK: And you're on behalf of the Plaintiff.
6 Correct?

7 MS. BERKOWITZ: I am. Thank you.

8 CLERK: Thank you. You can pause the recording,
9 Jonathan.

10 (Pause)

11 CLERK: Hi, Mr. Chapman. If you're going to be
12 speaking on the record, do you mind unmuting and giving your
13 appearance?

14 MR. CHAPMAN: I doubt I'll be speaking on the
15 record, but I don't mind anyway. Dean Chapman, Akin Gump
16 Strauss Hauer Feld for Celsius.

17 CLERK: Appreciate it. Thank you. You can
18 actually keep the recording going. Ms. Scott, will you be
19 speaking on the record today?

20 MS. SCOTT: Hi. Good afternoon. I'm not certain
21 so I'll go ahead and enter an appearance if that's okay.

22 CLERK: Of course. Thank you.

23 MS. SCOTT: Elizabeth Scott with Akin Gump on
24 behalf of Celsius.

25 CLERK: Thank you very much. You can pause the

1 recording now, Jonathan.

2 (Pause)

3 CLERK: Hi, Mr. Hurley. If you're going to be
4 speaking on the record, if you'd mind just making an
5 appearance.

6 MR. HURLEY: Yes. Good afternoon or good evening
7 I guess. Mitch Hurley with Akin Gump Strauss Hauer Feld on
8 behalf of the Defendant, Celsius.

9 CLERK: Thank you very much.

10 MR. HURLEY: You're welcome.

11 CLERK: You can pause the recording, Jonathan.
12 You can pause the recording, Jonathan.

13 (Pause)

14 CLERK: Start the recording again. Mr. Hershey,
15 do you want to unmute and give your appearance, please?

16 MR. HERSHEY: Yeah. Sam Hershey from White & Case
17 on behalf of the Official Committee of Unsecured Creditors.

18 CLERK: Okay. Judge, would you like to begin?

19 THE COURT: Yes, I would. Good afternoon,
20 everybody. We're here in the adversary proceeding Rhodium
21 Enterprises versus Celsius Mining, 23-01101.

22 The Court has reviewed the letters from Mr. Hurley
23 and Ms. Berkowitz and I scheduled this conference today to
24 talk about it. I entered an order setting the conference
25 with also some directions. Ms. Berkowitz, do you want to

1 begin?

2 MR. STOKES: Your Honor, this is John Stokes.

3 THE COURT: Okay.

4 MR. STOKES: I'll be speaking for the Plaintiff,
5 Rhodium.

6 THE COURT: Okay. Go ahead, Mr. Stokes.

7 MR. STOKES: Yes. Happy to begin. First, I want
8 to thank the Court and its staff and the court reporter for
9 seeing us on an urgent basis in the evening. I know that's
10 unusual and we thank the Court for its time.

11 The basic ask that we have, that we be given the
12 opportunity to lay this dispute out for you, to have our
13 position considered, and see if we can persuade you, Your
14 Honor, that this case does involve an unambiguous contract
15 that doesn't require the introduction of extrinsic evidence,
16 not dissimilar from what would happen if you were
17 considering a motion to dismiss.

18 Now, we're a declaratory relief plaintiff so the
19 posture's a little bit different, but in our view, the --
20 it's essentially the same concept. Now, if you were to
21 agree with us, that would presumably be the end of it. If
22 you were to disagree, we of course acknowledge that there
23 would need to be discovery into what the parties meant on
24 any ambiguous terms that matter to the case. But the basic
25 ask remains the same, that we be permitted to file our

1 motion and have a chance to lay it out so that there's at
2 least a possibility of -- and we know that this is not
3 itself an inconsiderable ask. We understand that -- but so
4 that there's at least a possibility that this matter gets
5 resolved in advance of what is the June 30 deadline for the
6 merger between Rhodium and SilverSun. That's the basic
7 position that we have.

8 Now, we have met and conferred and we're happy to
9 -- about the matters in your order. We're happy to talk
10 about that further, but I wanted to begin with what our kind
11 of fundamental position remains, and really like the request
12 that we would still like to make of the Court.

13 THE COURT: Okay. Mr. Hurley.

14 MR. HURLEY: Thank you. Good evening, Your Honor.
15 So, Your Honor, we received the Court's order I guess last
16 night requiring the parties to meet and confer in advance of
17 this conference and just try to agree on a CMO and
18 scheduling order that includes "a date for Defendant to
19 answer the complaint, file counterclaims, dates for
20 concluding fact and expert discovery, and following the
21 close of discovery, any dispositive motion practice." This
22 morning at about 9:00 a.m., we sent over a CMO and
23 scheduling order to Rhodium that complied with that
24 direction.

25 We had a meet-and-confer at noon today with

1 Rhodium, and we asked them, you know, what they thought of
2 our proposed schedule. They said that they thought it was
3 basically reasonable but that they were going to renew their
4 request that they be allowed to make a summary judgment
5 motion before taking discovery.

6 I asked them specifically whether they had a
7 proposal to make that would allow for all of the things that
8 Your Honor included in the order last night to happen in
9 advance of having this motion decided by June 30th. They
10 said they did not have such a proposal and would not be
11 making such a proposal. Instead, what they suggested is
12 that they would proceed with their motion alongside the
13 schedule that we proposed, which of course would effectively
14 mean that we would not have the opportunity to take any
15 discovery or engage in other typical early motion practices
16 before a summary judgment motion is filed.

17 We continue to believe that that approach is both
18 unjustified and impractical and counter to the practice in
19 virtually every case I've ever been involved in in any way.
20 It really puts the cart before the horse, and our real
21 concern here, Your Honor, is cost. I mean, you know, a lot
22 of times a party wants to kind of take a halfcourt shot at
23 the beginning of the case because they hope if they hit it,
24 then, great, they -- everybody gets to go home. But there's
25 a real cost to taking that halfcourt shot at the beginning

1 of the case and it's a cost to Celsius and to Celsius
2 creditors, and Rhodium has done nothing in our view
3 convincingly to suggest that Celsius should have to take
4 that risk and that cost on its own shoulders.

5 To the extent there is any urgency here, and we've
6 never heard a cogent explanation for how there really is
7 urgency other than that Rhodium wants to know the answer so
8 it can decide whether it wants to go -- want to follow
9 through with this deal -- but to the extent there's any
10 urgency at all, is 100 percent of the making of Rhodium.
11 Celsius identified this dispute on October 27th of last
12 year.

13 While it certainly is true that the parties
14 engaged in negotiations over settlements since then, again
15 and again over the course of the past six months, Celsius
16 advised Rhodium that it did not yet have a deal and if
17 Celsius ever got to the point where it was interested in
18 accepting terms, the UCC would also have to agree and then
19 the Court would have to agree. The UCC became involved in
20 discussions in late December. We had back and forth where
21 there was some diligence requests made and some narrative
22 responses provided, but the documents that we requested --
23 they never provided a single page, and, you know, they say,
24 well, we were asking you guys whether, you know, we could
25 get a response to your settlement. We didn't get one.

1 Well, that doesn't mean that you should conclude that you're
2 definitely getting a settlement. In fact, I would suggest
3 it probably means the exact opposite.

4 But even if they were right, Your Honor, that
5 somehow they had this belief that we were going to get into
6 a settlement, that doesn't justify what they did. They
7 didn't just hide the ball and not tell us until April 27th
8 that they believed that the existence of this dispute could
9 make it legally impossible for them to close. The first
10 time they ever said that was April 27th. They didn't just
11 hide that ball until April 27th. They said the opposite.
12 They -- part of their negotiating strategy was to basically
13 threaten that if -- that they could close with or without
14 us. If we didn't get onboard, they were going to run over
15 us.

16 Having said that to us for the better part of six
17 months, Your Honor, I don't see how they can show up here
18 and insist that the Court and Celsius bear the cost and
19 inconvenience that's associated with them suddenly deciding
20 that what they've been telling us for five or six months
21 actually wasn't accurate and that they need to eliminate
22 this dispute by the end of June.

23 I would note that the approach that they're
24 proposing to take is basically unheard of and unprecedented.
25 You know, in virtually every case, when a party comes

1 forward and says, we want to move for judgment before
2 there's been discovery, it winds up being an unproductive
3 proceeding. Let me just quote something that Your Honor
4 said on December 8th because I think it captures exactly the
5 situation we have here.

6 On December 8th, some other parties in this case
7 had suggested that there be a ruling construing the terms of
8 use with respect to which Debtor has liability to customers
9 without first taking discovery because supposedly the terms
10 of use were unambiguously required, the outcome advocated by
11 those advocates, and Your Honor said -- and it's a brief
12 quote and I'll make it brief -- Your Honor said, "How many
13 times have I heard that over the years? Everybody thinks
14 it's unambiguous but they completely disagree about what it
15 means. You know, I've had many cases over the year, and as
16 a lawyer before I became a judge, where people had competing
17 arguments that the plain language of a contract supports
18 their view and extrinsic evidence is not admissible and then
19 a court decides that, no, it's ambiguous and we need
20 extrinsic evidence."

21 And in that case, Your Honor, you also refused to
22 do things backwards. And instead, you said, we're going to
23 do discovery before we get into these arguments. I would
24 submit that the same approach makes sense here. And I would
25 finally note, talking about the lack of precedence for this

1 approach, they cite -- Rhodium cites one case to Your Honor
2 for this to support what they're proposing to do. In that
3 case, there wasn't a motion for summary judgment filed five
4 days after a preemptive complaint was filed. It was 16
5 months after the complaint was filed in the case that they
6 cite that summary judgment motion was made. And in that
7 case, Your Honor, the motion was denied in part, including
8 the breach of contract claim, in order to permit the parties
9 to take discovery.

10 I'd submit again as we did in our letter that the
11 approach that Mr. Stokes is proposing is completely wasteful
12 and it is unjustified. It is the product of a problem that
13 they have created entirely themselves.

14 THE COURT: Let me ask you this, Mr. Hurley. Have
15 you been involved in this dispute since it first surfaced in
16 the discussion?

17 MR. HURLEY: Yes, I have.

18 THE COURT: Okay. And I realize this hearing
19 today was scheduled very shortly after the complaint filed
20 which I typically never do for very good reasons, frankly.
21 But I'll ask you this question in any event since you
22 obviously been involved in the issues in dispute. What is
23 your view, and I realize it may -- I'm not going to bind you
24 to this -- it may still change -- as to what answer -- well,
25 are you going to answer or move to dismiss? What is the

1 view as of now at least as to what course if you're required
2 to respond to the complaint? Is it going to an answer? Are
3 there going to be counterclaims? What is the likely
4 approach?

5 MR. HURLEY: We believe the likely approach is an
6 answer with counterclaims followed by discovery, Your Honor.

7 THE COURT: Okay. And do you at this stage --
8 because obviously, you've been -- the parties have been in
9 discussion for quite some time -- what are the nature of the
10 counterclaims that you expect to assert?

11 MR. HURLEY: We're still considering the full
12 panoply of available counterclaims, Your Honor. We
13 certainly have a different view of the meaning of the
14 agreement than the Defendants do. We certainly believe that
15 no matter what, it's going to be necessary for there to be
16 discovery here, including into valuation.

17 So, if I could just back up and give you a little
18 bit of the background on the case, Your Honor, if that's
19 okay.

20 THE COURT: Sure, please.

21 MR. HURLEY: Okay. So, Celsius invested \$50
22 million in Rhodium on June 2nd, 2021, pursuant to the SAFE
23 agreement, okay, and just to be clear, that's 50 million
24 real dollars that Celsius contributed --

25 THE COURT: That's not sell tokens?

1 MR. HURLEY: Not sell tokens, U.S. dollars. That
2 Celsius contributed to Rhodium according to the terms of the
3 SAFE itself for the purposes of funding Rhodium's business
4 operations. That's in June of 2021.

5 In return for that key funding, Celsius got some
6 rights under the SAFE, and it has the right on the
7 occurrence of certain kinds of transactions involving
8 Rhodium to receive \$50 million worth of shares of Rhodium.
9 Now Rhodium itself admits that. It's \$50 million worth.
10 The value has got to be \$50 million. In some cases, it
11 would actually be more because the number of shares required
12 to get to \$50 million is calculated at a discount so that
13 there's a premium for Celsius in that event, and we believe
14 this merger at issue here is such a transaction. But at a
15 minimum, it's got to be \$50 million worth of shares.

16 So, the question here really hinges on the
17 category of transaction which the merger falls and how you
18 arrive at the consideration that has to be provided to equal
19 at least \$50 million. Okay.

20 Now here, Rhodium purports to calculate the number
21 of shares due to Celsius based on a valuation that Rhodium
22 appears to have created with its merger partner SilverSun.
23 According to them, Rhodium is worth around \$650 million at
24 least for the Common A. So, their valuation is, say, \$650
25 million. Okay.

1 That valuation appears, Your Honor, to be grossly
2 inflated compared to the actual value of the company,
3 including based on market evidence. So SilverSun's shares
4 are publicly traded, and if you look at the trading price of
5 SilverSun shares and consider what those shareholders are
6 supposed to get under this deal, the implied value of the
7 company that's going to merge is not \$650 million. It's
8 substantially less than \$250 million.

9 Now, if you use the \$650 million valuation as the
10 basis for calculating the number of shares that we're
11 entitled to, but really the company's worth \$250 million,
12 Celsius is getting a small fraction of the \$50 million-
13 dollar investment that it's entitled to recoup, literally,
14 less than \$20 million.

15 So -- now, an interesting thing here, Your Honor,
16 is we have pointed this issue out to Rhodium on several
17 occasions. And the response have not been, Celsius, stop,
18 let me explain to you why it is that in fact the fair value
19 of this company is \$650 million. The answer has been
20 instead, it doesn't matter. If we and SilverSun say it's
21 \$650 million, you are required to accept that value as a
22 basis for calculating the number of shares that it'd be
23 provided as consideration to you for this SAFE unless we say
24 it's more than 3 billion. Anything under 3 billion, if we
25 agree to it, that's it, you don't even get to ask us about

1 the valuation.

2 THE COURT: Is that based -- is their argument
3 based on some contract language that they pointed to?

4 MR. HURLEY: Your Honor, there is nothing --

5 MR. STOKES: Yes, Your Honor.

6 MR. HURLEY: -- in the contract that says --

7 THE COURT: Don't interrupt Mr. Hurley. Go ahead.
8 Go ahead, Mr. Hurley.

9 MR. HURLEY: Your Honor, there's nothing in the
10 contract that says that Rhodium is entitled to go out and
11 create a valuation. There is nothing in -- the contract
12 itself speaks of share price. It speaks of proceeds on the
13 consummation of the deal, and it says very explicitly that
14 the consideration must be equal to \$50 million, okay?

15 So, we had asked from the beginning, well, let us
16 understand how you arrived at this number, and they will not
17 give us a single page of documentary information concerning
18 the valuation. They say, well, there was a fairness opinion
19 that was provided to SilverSun, as if that's supposed to
20 give comfort to a SAFE holder that's only getting Rhodium
21 shares. It doesn't, Your Honor, because the SilverSun
22 shareholders under the terms of the merger agreement,
23 they're not just getting Rhodium shares, they're also
24 getting cash and they're getting a spun-out company. And
25 their fairness opinion itself says in the disclosures that

1 the opinion is only that when you take all of those
2 transactions and consideration together that go into
3 SilverSun shareholders, that those -- that that -- those
4 transactions together are fair to SilverSun shareholders.

5 There's an express disclaimer that they are not
6 saying that any individual element of the consideration is
7 fair. There's a disclaimer that they're not saying that the
8 transactions are fair to anyone but SilverSun.

9 So, there is nothing in the contract that supports
10 -- in our opinion, there is a limit to how much they set the
11 value at. It's 3 billion. They can't go above 3 billion
12 and I acknowledge that. But there's nothing, in our view,
13 that remotely supports the idea that they can out and create
14 a valuation that is not fair value or at least a good faith
15 attempt to arrive at fair value, and they have never even
16 tried to demonstrate to us that's either thing.

17 So, we believe no matter what with respect to that
18 question, discovery is going to be required. We think there
19 are real questions about the way this transaction was
20 structured and whether it was done in a way to basically
21 arrive at the exact same outcome as a listing event while
22 avoiding having to apply the discount in calculating the
23 numbers of shares that are due to us. We think there needs
24 to be some discovery around that. There are a host of other
25 issues, Your Honor. We sent them letters that include in

1 detail the information we think is relevant and we believe
2 that's going to be an important part of this case once it
3 proceeds, and certainly before, we submit respectfully,
4 Celsius's required to respond to a dispositive motion.

5 THE COURT: All right. Mr. Stokes, do you want to
6 respond?

7 MR. STOKES: Yeah. I'd like to respond on the
8 merits and then to a number of the procedural points that
9 were made.

10 First on the merits. Celsius has taken the
11 position that under the SAFE, the transaction that we're
12 talking about here is what's known as a listing event which
13 entitles them to a discount of the valuation that is being
14 used in connection with the transaction. The SAFE expressly
15 defines three types of triggering events that give -- that
16 qualify as a listing event. The only one that Celsius
17 points to is what's called a direct lifting. There have
18 only been something like 20 direct listings in the history
19 of -- in history ever, and it requires -- and this is in the
20 contract's terms -- a direct listing requires an S-1
21 registration of the company's existing shares.

22 The merger that's happening here is under an S-4
23 registration which is the way you go public through a merger
24 not through a direct listing. There are three specifically
25 enumerated categories that say what counts as a listing

1 event that triggers the discount. This clearly isn't one of
2 them. This clearly isn't one of them. And we think that
3 once we have a chance to lay this out for you, it's going to
4 be crystal clear. And I don't know what exactly Mr. Hurley
5 is suggesting on this point that, like, it's not within the
6 spirit or something of the -- of what a listing event is,
7 but where the contract's terms are clear, they're clear.
8 This is obviously -- obviously -- not a listing event under
9 the contract.

10 Now, as to the --

11 THE COURT: Does that resolve the value -- that
12 may go to whether or not they acquired at a discount, but
13 does that deal with the valuation issue?

14 MR. STOKES: No, not directly. It resolves the
15 discount. As to the valuation, if this is -- the other type
16 of event -- well, there are a couple of others, but the
17 other relevant type of event -- a liquidity event -- what
18 they are entitled to is \$50 million of proceed. It's a
19 capitalized term in the agreement.

20 Proceeds are defined as the cash and other assets,
21 including without limitation, stock consideration that are
22 proceeds from the liquidity event, meaning, like in plain
23 English, they get a share of the proceeds that Rhodium's
24 existing shareholders get from the transaction.

25 Under the merger, it's extremely clear. I mean,

1 Mr. Hurley said it. What Rhodium's shareholder are getting
2 is based on the \$650 million valuation that was established
3 for Rhodium in connection with the merger. That's what
4 they're entitled to. It doesn't say anything at all about a
5 valuation. It doesn't. It says you get proceeds, including
6 stock that are proceeds from the liquidity event. Okay.
7 That means ask what we got. What did Rhodium get from the
8 transaction.

9 What Rhodium got from the transaction are shares
10 based on this valuation. Again, we can lay this out for you
11 in clear terms. It's very clear that the Rhodium valuation
12 determines the number of shares that Rhodium's existing
13 shareholders get and the --

14 THE COURT: So, Rhodium could pick any number it
15 wished for its valuation and Celsius would sort of be stuck
16 with it? They would not be able to contest that valuation?
17 Is that your position?

18 MR. STOKES: No. They're not alleging --

19 THE COURT: Is that your position?

20 MR. STOKES: No. They're not alleging this is a
21 sham transaction, Your Honor.

22 THE COURT: But that wasn't not my question. You
23 get to pick what the valuation number is and they can't
24 contest it?

25 MR. STOKES: Yes. If it's --

1 THE COURT: Really?

2 MR. STOKES: -- if -- yes. Let's say that we were
3 to -- this is the way that it works under a SAFE, Your
4 Honor. Let's say that we were to go and raise money through
5 like a Series A -- or I don't know what Series A would be on
6 -- but like through, let's say, a Series A round with a
7 major VC firm. And the VC firms says, we're going to invest
8 \$10 million at a \$100 million valuation or a \$1 billion
9 valuation of Rhodium.

10 They are bound by that. The only protection that
11 they negotiated for in the SAFE -- the only protection is
12 the valuation cap. The contract speaks exactly to this
13 point. Now, I can imagine a world where they say, this is a
14 made-up transaction. This isn't even a bona fide thing.
15 It's a sham where the whole purpose is to, you know -- where
16 it's not real. It's not like an arm's length transaction,
17 whatever. That's not what they're saying.

18 They're saying they just disagree with the
19 valuation. There's no way, we think, that they're going to
20 be able to allege that this is some kind of sham or anything
21 like that. And as long as we're not in that world, the
22 contract speaks exactly to what they're entitled to. The
23 whole point is to put -- when you're talking about proceeds,
24 it says, you, Celsius get what we, Rhodium, get. The whole
25 point is for -- is to put everyone on the same footing.

1 Everyone shared in the same pot of money.

2 What Celsius is asking for is an independent right
3 to appraise the transaction so that their shares are
4 calculated based on an entirely different valuation than
5 literally everyone else is. That's not how this is supposed
6 to work. Again, we submit that like -- we can fight about
7 the meaning of the contract's terms. Certainly, obviously,
8 they have their view. We think that once we lay it for you
9 and point you to the relevant terms the relevant pieces of
10 the merger agreement, it's going to be very clear what the
11 answer is.

12 That's on the merits. If I could speak briefly on
13 the procedural points, Your Honor. First, you know, one
14 thing that we proposed in connection with the parties' meet
15 and confer is that Celsius file its answer on an expedited
16 basis. For example, we proposed by May 9th.

17 THE COURT: Wait a second, Mr. Stokes. You've
18 known about this dispute for months and months and months,
19 and yet you wait until today -- until this week -- to
20 trigger this and say, we want to file an immediate summary
21 judgment motion. It doesn't work that way, okay? It simply
22 does not work that way, all right?

23 I will --

24 MR. STOKES: May I speak to that, Your Honor?

25 THE COURT: No, you can't. You can't. You cannot

1 speak to that, okay. I control my docket which is extremely
2 busy, all right, and you can't file this complaint and
3 before there's any responsive pleading, any discovery,
4 anything else, say, we want to immediately file a summary
5 judgment motion, okay.

6 Never in 16-plus years on the bench have I
7 permitted that to happen and I'm not going to permit that
8 today, okay. Let me make that crystal clear to you. You've
9 not persuaded me by your letter that you're entitled to the
10 relief you're seeking. This case is going proceed in an
11 orderly fashion.

12 MR. STOKES: Your Honor, one alternative that
13 would --

14 THE COURT: The rules set out the alternatives,
15 Mr. Stokes, and I'm going to follow the rules and you're
16 going to follow the rules.

17 MR. STOKES: We intend to follow the rules. And
18 just to be clear, Your Honor, the Federal Rules allow for
19 the filing of a summary judgment motion at any time,
20 including at the commencement of the case. Now, I --

21 THE COURT: Not -- our Local Rules do not. Our
22 Local Rules do not, okay. I am not permitting you to file
23 your -- you can -- you know, if you want to file your
24 summary judgment motion, it's going to sit there. It's not
25 going to get considered. They're not going to have to

1 respond. I won't stop you from filing your summary judgment
2 motion. You file it, and we'll hear it sometime after the
3 cases at issue, after there's been discovery.

4 So, go ahead and file your motion. You think you
5 have the right? Go ahead. File it.

6 MR. STOKES: I'd like to --

7 THE COURT: You want to file it today? File it
8 today, okay. It'll be sometime months from now before
9 you'll ever have that considered.

10 MR. STOKES: Understood, Your Honor. We believe
11 that once Celsius files an answer and its counterclaims, the
12 rules would permit us to file, for example, a motion to
13 dismiss those counterclaims or for judgment on the
14 pleadings. Perhaps -- I understand Your Honor's view on
15 getting any kind of answer with respect to this question
16 before June 30th.

17 An alternative that would comply with the pleading
18 stage rules would be if Celsius files its answer on an
19 expedited basis. They've had six-plus months to consider
20 their view of what claims they might have.

21 THE COURT: Is it true that you hadn't produced
22 any of the documents they requested? Is that true?

23 MR. STOKES: The -- yeah. The --

24 THE COURT: That was a yes? That was a yes to my
25 question?

1 MR. STOKES: Based on parties' extensive --

2 THE COURT: How is it that you think that when you
3 are in discussions and negotiations with them and they made
4 a request for documents and you stonewalled them, that
5 you're going to come in today and say, oh, they don't need
6 any discovery.

7 MR. STOKES: Right.

8 THE COURT: We'll just file our motion for summary
9 judgment, okay? It's not happening.

10 MR. STOKES: Your Honor, we --

11 THE COURT: Look, when -- file your motion today,
12 okay. Is it ready?

13 MR. STOKES: I'd like to make a record, Your
14 Honor, if I could --

15 THE COURT: No. Is your motion ready?

16 MR. STOKES: Your Honor, the motion -- it would
17 ready to file tomorrow.

18 THE COURT: Okay. File your motion tomorrow.

19 MR. STOKES: Just to clarify the record, Your
20 Honor, we provided them extensive information after a
21 months-long negotiation about their document requests that
22 was in connection with what Rhodium understood to be a --
23 this close to settlement position. We have an email --

24 THE COURT: Why didn't you provide them with the
25 documents?

1 MR. STOKES: Because after extensive discussions
2 with them, Your Honor, about what they needed in connection
3 with the parties' business resolution where we had an email
4 --

5 THE COURT: Do you decide what they need or what
6 they ask for?

7 MR. STOKES: No. We spoke -- I wasn't on these
8 calls. There were multiple diligence calls as they were
9 called in the record. We can put the record before you,
10 Your Honor.

11 THE COURT: I don't want the record in front of
12 me. When this case -- when the case is at issue, and if
13 Celsius wishes to take its discovery, it should move forward
14 with the discovery. And in due course, this will all be
15 treated -- if you want to file your motion, I'm not stopping
16 you from filing your motion. I'm just not going to require
17 them to respond to the motion at this stage.

18 MR. STOKES: Understood, Your Honor.

19 THE COURT: Okay. Mr. Hurley, tell me what the
20 schedule you proposed.

21 MR. HURLEY: So, I apologize, Your Honor. I don't
22 have it in front of me. I know that the date that we had
23 proposed to conclude all fact discovery I believe is --

24 THE COURT: Let's take it one step at a time.

25 MR. HURLEY: Okay.

1 THE COURT: When do you propose to answer and file
2 counterclaims?

3 MR. HURLEY: The answer was on the ordinary
4 schedule basically, Your Honor.

5 MR. STOKES: I sorry. I hate to interrupt. I
6 have it up. I can speak to it.

7 MR. HURLEY: Sure.

8 MR. STOKES: I don't -- I do not intend to
9 interrupt.

10 MR. HURLEY: That's okay.

11 MR. STOKES: The date that they have is May 22nd.

12 MR. HURLEY: If you have it, that's better.
13 Thanks.

14 MR. STOKES: I have it. The date they propose is
15 May 22nd.

16 THE COURT: All right.

17 MR. STOKES: The date for initial disclosures that
18 they proposed -- and Your Honor, aside from the answer date,
19 we would agree to all of these dates -- is May 26th was the
20 initial disclosure date.

21 THE COURT: Go ahead.

22 MR. STOKES: September 15th was the date they
23 proposed for fact discovery.

24 THE COURT: Okay. Go ahead.

25 MR. STOKES: Expert discovery -- I'm sorry?

1 THE COURT: Yeah, go ahead.

2 MR. STOKES: Expert discovery to be completed no
3 later than 75 days after the -- so, it's no later than 75
4 days after September 15th. I'm sorry. I don't have the
5 date listed in here.

6 THE COURT: Okay.

7 MR. STOKES: There's a deadline -- you know, I'm
8 happy to keep speaking about these dates, Your Honor. There
9 are a couple of things that aren't dates. The parties are,
10 I believe, close to agreeing on a form.

11 Can I propose that we just confer -- it could be
12 this evening or tomorrow -- with them and submit a proposed
13 case management and scheduling order that would reflect
14 these dates and the other matters that we believe -- we
15 understand from -- that are, you know, common to a case
16 management scheduling order in your Court?

17 THE COURT: Mr. Hurley, let me ask you.
18 Ordinarily, I wouldn't provide 75 days for expert discovery.
19 Why do you need 75 days?

20 MR. HURLEY: You know, it was what we started out
21 with. I guess we thought we were going to have a discussion
22 on our meet and confer call today but it was cut off pretty
23 short. We can certainly -- if that's too much time from
24 your perspective, Your Honor, of course we'd be happy to
25 shorten it.

1 THE COURT: Just bear with me a second. Well, my
2 template -- you could persuade me otherwise -- but my
3 template ordinarily provides 45 days for expert discovery
4 after the close of fact discovery. Why is it that you think
5 need 75 days?

6 MR. HURLEY: Well, we can work with 45 days, Your
7 Honor. I mean, a little more time, we probably would have
8 made use of, but 45 days is fine. We don't object to that
9 if that -- I mean, assuming that --

10 THE COURT: All right. Look, here's what I want
11 the two of you to do. Confer and see if you can agree on
12 the case management and scheduling order, including if you -
13 - if the two of you agree that more than 45 days is needed
14 for expert discovery within, you know -- if it's somewhere
15 between the 45 and 75 days, work it out, okay.

16 And if you agree -- if you can agree on the terms
17 of the case management and scheduling order, use the basic
18 form that's in my template which is posted on the website.
19 I think you've seen it before. In all likelihood, I will
20 enter that order. So, if you would -- I'm going to --
21 actually leaving for Washington, D.C. for meetings and
22 coming back Friday the end of the day, but I will be in
23 touch with my chambers so if you can submit it by the end of
24 the day Thursday, the form of an order. I'll confer with my
25 chambers and hopefully it will be entered.

1 MR. HURLEY: I'm sure that timing will work, Your
2 Honor.

3 THE COURT: You know, Mr. Stokes, if you want to
4 file your motion, go ahead and file your motion. I'm just
5 not going to require the Debtor to answer or respond to the
6 motion at this point.

7 MR. STOKES: Okay. Understood, Your Honor. I
8 don't to want belabor any point because we appreciate that
9 we have already burdened the Court's time on an evening
10 conference. I would like if you would permit me to make our
11 record on the fact -- on the history here that Mr. Hurley
12 presented to you for why we got to this point just so that
13 we could at least note our disagreement.

14 THE COURT: Go ahead.

15 MR. STOKES: Rhodium believed that this matter was
16 on the verge of being settled in February. The parties were
17 exchanging deal documents that they were calling them. We
18 have an email from Mr. Hurley's office saying that it --
19 they believed that February 9th was a reasonable target to
20 close. After that date passed, we had radio silence from
21 Rhodium -- or I'm sorry -- from Celsius from more than a
22 month.

23 Celsius did not respond to multiple emails that
24 Rhodium personnel, Rhodium employees, sent them, and then
25 resurfaced in March -- March 16th was the date of their

1 letter -- proposing an entirely different settlement
2 structure making an entirely different demand. At that
3 point, the parties exchanged a couple more letters because
4 it has always been Rhodium's preference to resolve this
5 dispute. And within days of us receiving a letter from
6 Celsius saying that they didn't think that -- basically
7 cutting off, in our view, any further negotiations, we filed
8 our complaint.

9 We strenuously object to the characterization that
10 it is our fault that we are in this position because we
11 thought that this was going to be done and then we didn't
12 hear back from them for more than a month. Once they
13 resurfaced, we again tried in good faith to settle it, and
14 as soon as it became clear that we couldn't, we filed our
15 complaint. So, I just want to make our record on that so
16 that it wasn't a one-sided presentation.

17 THE COURT: Okay. I will look out for the case
18 management and scheduling order. If you want to file your
19 motion, file your motion. I will look at it. We may
20 schedule another conference to talk about it. I want to see
21 what the Celsius answer is and what counterclaims if any
22 they assert as well.

23 Anything else for today? Well, let me -- Mr.
24 Hershey, is there anything you want to say on behalf of the
25 committee?

1 MR. HERSHEY: Thank you, Your Honor, no.

2 THE COURT: Okay. All right. Anybody else have
3 anything they want to add? All right. We're adjourned.
4 I'll be on the lookout for your -- for the draft of the case
5 management and scheduling order.

6 MR. HURLEY: Thank you, Your Honor.

7 MR. STOKES: Thank you, Your Honor.

8

9 (Whereupon these proceedings were concluded at

10 5:37 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: May 8, 2023

[& - ambiguous]

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